

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
BATESVILLE DIVISION**

**BRANDON ATCHLEY  
ADC #140054**

**PLAINTIFF**

v.

**Case No. 1:12-cv-00070 KGB**

**JENNIFER HORN *et al.***

**DEFENDANTS**

**ORDER**

The Court has reviewed the Proposed Findings and Recommendations submitted by United States Magistrate Judge H. David Young. Brandon Atchley filed an objection (Dkt. No. 24). After a careful, *de novo* review of the record, the Court concludes that the Proposed Findings and Recommendations should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

The Court acknowledges Mr. Atchley's point that, given the grievance policy of the Arkansas Department of Correction ("ADC"), this dismissal without prejudice may in effect operate as a dismissal with prejudice because Mr. Atchley may be unable to exhaust the grievance process now due to lateness and the ADC's policy. Controlling precedent requires that Mr. Atchley exhaust the grievance process of the ADC before filing suit in federal court, even under these circumstances. *See Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006).

**IT IS THEREFORE ORDERED THAT:**

1. Defendants' motion for summary judgment (Dkt. No. 11) is granted, and Mr. Atchley's complaint is dismissed without prejudice.
2. All other pending motions are denied as moot.
3. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

IT IS SO ORDERED THIS the 30th day of May, 2013.

  
Kristine G. Baker  
KRISTINE G. BAKER  
UNITED STATES DISTRICT JUDGE